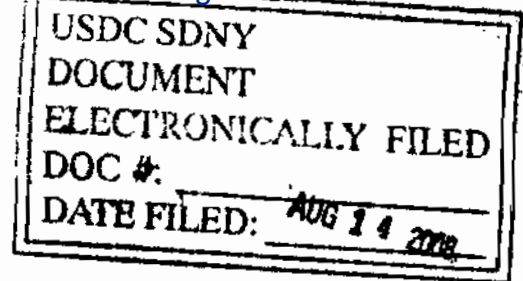




THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

MICHAEL A. CARDOZO
Corporation Counsel



DOUGLAS W. HEIM
Assistant Corporation Counsel
phone: (212) 788-1298
fax: (212) 788-9776
dheim@law.nyc.gov

August 11, 2008

BY FAX: (212) 805-6737

Honorable George B. Daniels
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

SO ORDERED

The conference is adjourned to
November 18, 2008 at 9:30 a.m.

George B. Daniels AUG 14 2008
HON. GEORGE B. DANIELS

Re: Tyrone Day v. City of New York, et al., 08 Civ. 6326 (GBD)

Your Honor:

I am an attorney in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, representing defendant City of New York ("City") in the above-referenced action. I write to respectfully request (1) an extension of the City's time to answer or otherwise respond to the complaint from August 11, 2008 to October 10, 2008, and (2) and adjournment of the October 23, 2008 initial conference until a later date and time convenient to the Court. Attempts to contact plaintiff's counsel by telephone and e-mail for consent have been unsuccessful. Despite many attempts, I have not been able to leave a telephone message with plaintiff's counsel. As such, this application is being made directly to the Court.

There are several reasons for seeking an enlargement of time in this matter. In accordance with this office's obligations under Rule 11 of the Federal Rules of Civil Procedure, we need time to investigate the allegations of the complaint. In his complaint, plaintiff alleges, *inter alia*, that he was falsely arrested and subjected to excessive force by police officer Pablo Best.¹ Furthermore, it is our understanding that the records of the underlying criminal action, including police records, may have been sealed pursuant to New York Criminal Procedure Law § 160.50. Therefore, this office is in the process of forwarding to plaintiff for execution a consent

¹ Upon information and belief, Officer Best has not yet been served in this matter.

and authorization for the release of sealed arrest and criminal prosecution records so that defendant City can access the information, properly assess the case, and respond to this complaint.

Additionally, because plaintiff has alleged injuries as a result of the alleged misconduct by defendants, this office is also in the process of forwarding to plaintiff for execution a consent and authorization for the release of medical records, limited, at this juncture, to medical records concerning treatment received as a result of the alleged incident, so defendant City can properly assess the case and respond to the complaint.

Finally, should the Court grant this enlargement, this office, pursuant to Section 50-k of the New York General Municipal law, and based upon a review of the facts of the case, would have time to determine whether we may represent the individually named defendant in this matter. See *Mercurio v. The City of New York, et al.*, 758 F.2d 862, 864-65 (2d Cir. 1985) (quoting *Williams v. City of New York, et al.*, 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985) (decision whether to represent individual defendants is made by the Corporation Counsel as set forth in state law)).

As an additional matter, defendant City also respectfully requests an adjournment of the October 23, 2008 initial conference in this matter. I am presently scheduled to serve as co-counsel in the matter of Jean-Laurent v. C.O. Wilkerson, et al. 05 Civ. 583 (VM), which is presently scheduled for trial beginning on October 20, 2008, before the Honorable Victor Marrero, and is expected to proceed through Friday, October 24, 2008.

No previous request for an extension or adjournment has been made by either party. At this juncture, the initial conference is the only hearing and/or deadline affected by this request. Accordingly, it respectfully requested that the Court grant the City's application to (1) extend its time to answer or otherwise respond to the complaint from August 11, 2008 until October 10, 2008; and (2) adjourn the initial conference from October 23, 2008 until a later date and time convenient to the Court.

Thank you for your consideration herein.

Respectfully submitted,



Douglas W. Heim
Assistant Corporation Counsel
Special Federal Litigation Division

cc: Darius Wadia, Esq. (By Fax: 212-571-9149)
Attorney for Plaintiff
233 Broadway, Suite 2208
New York, NY 10279